EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

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AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules completed a comprehensive "style" revision of Criminal Rules 1-60 using uniform drafting guidelines. It also proposed substantive amendments to several rules that have been under consideration outside the "style" project. The two sets of amendments to the Criminal Rules were published in separate pamphlets for comment by the bench and bar in August 2000. Three public hearings were scheduled on the proposed amendments, but only one was held in Washington, D.C. on April 25, 2001, because no witnesses requested to testify at the two other hearings.

Proposed Comprehensive "Style" Revision of Criminal Rules

The "style" revision of the Criminal Rules is part of an effort to clarify and simplify the language of the procedural rules. The comprehensive revision is similar in nature to the revision of the Federal Rules of Appellate Procedure, which took effect in December 1998. The original draft of the comprehensive revision was prepared by a leading legal-writing scholar. The draft was then vetted by the Committee's Style Subcommittee with the assistance of two law professors. The revised draft was submitted to the advisory committee, which divided itself into two subcommittees. Both the advisory committee and its subcommittees held a total of 16 meetings during a 28-month period intensively reviewing all the rules. The draft went through

countless flyspecking sessions and many iterations before it was approved for publication for public comment.

In addition to publishing the proposals in major legal publications and circulating them to the large bench-and-bar mailing list, the proposed amendments were distributed to several hundred law professors who teach criminal procedure. Copies of the proposals were also sent to all major bar groups, including liaisons from each of the state bar associations. Major organizations involved in the administration of criminal justice were alerted early to the project, provided input throughout the project, and commented on the published proposals. These included the Department of Justice, Federal Magistrate Judges Association, Federal Public Defenders Association, and National Association of Criminal Defense Lawyers. Virtually all comments received from the bench, bar, and law professors were favorable to the restyled rules. The only negative comments were received from the National Association of Criminal Defense Lawyers, who were concerned that the changes might generate satellite litigation arising from inadvertent substantive changes. It bears notice, however, that they failed to identify any inadvertent substantive change. The committees' deliberate and laborious process was designed to ferret out any inadvertent substantive changes. No substantive changes beyond those identified by the advisory committee and specifically described in the Committee Notes to the rules have been identified so far.

Overarching Revisions

In its "style" project, the advisory committee focused on several major elements. First, it attempted to eliminate the existing confusion regarding key terms and phrases that appear throughout the rules by simplifying and standardizing them. For example, existing Rule 54 (Application and Exception) draws a distinction between a "Federal magistrate judge," which is

limited to a federal magistrate judge, and a "Magistrate judge," which includes state judicial officials. The proposed amendments eliminate these misleading titles and include a state judicial official in the definition of "judge." Second, the committee deleted provisions that no longer are applicable or necessary, usually because case law has evolved since the rule was first promulgated. Third, it reorganized several rules to make them easier to read and apply. Over the years, these rules have evolved inconsistently, occasionally resulting in convoluted provisions. For example, existing Rule 40 (Commitment to Another District) contains multiple layers of procedures that have bedeviled even experienced lawyers. The rule has been reorganized.

Specific Revisions Affecting Present Practices

The "style" revision resolved existing ambiguities in the rules that may affect present practices in some districts, which are identified in the Committee Notes accompanying the specific rule. None of the specific rule changes drew criticism during public comment. The more significant changes are highlighted below.

Rule 4 (Arrest Warrant or Summons on a Complaint) was amended to conform to the recently enacted Military Extraterritorial Jurisdiction Act (Pub. L. No. 106-523, 106th Cong.), which authorizes arrest warrants to be executed outside the United States on military personnel and Department of Defense civilian personnel. The comprehensive "style" revision of the rules was published for comment before the statute was enacted. The proposed amendment to Rule 4 conforms to the later-enacted statutory provisions and is submitted in accordance with established Judicial Conference procedures without first being published for comment.

Rule 5 (Initial Appearance) was amended to conform to the Military Extraterritorial Jurisdiction Act's provisions authorizing a magistrate judge to conduct an initial appearance proceeding of certain persons overseas by telephone communication. The change conforms to

the statute and also was not included in the proposed amendments published for comment. In addition, many of the removal provisions presently contained in Rule 40 have been transferred to proposed Rule 5 and are revised to provide a court with flexibility to hold an initial appearance proceeding of an accused who is arrested in a district other than the district where the offense was allegedly committed. Under the proposed amendment, the initial appearance proceeding may occur in the district where the prosecution is pending if that district is adjacent to the district of arrest and the appearance will occur on the day of the arrest.

The title of **Rule 5.1 (Preliminary Hearing)** would be changed from preliminary "examination" to preliminary "hearing," which predominates present usage and more accurately describes the proceeding.

Under the proposed amendments to **Rule 6 (The Grand Jury)**, a court may require disclosure of a grand-jury matter if the disclosure may reveal a violation of military-criminal law.

Consistent with case law, **Rule 7 (The Indictment and the Information)** would be amended to exempt a charge of criminal contempt from the general requirement that prosecutions for a felony must be initiated by indictment.

The proposed amendment to **Rule 9 (Arrest Warrant or Summons on an Indictment or Information)** provides a court with discretion not to issue an arrest warrant if a defendant fails to respond to a summons and if the government declines to request issuance of a warrant.

Rule 12 (Pleadings and Pretrial Motions) would be amended to promote early setting of pretrial-motion deadlines by vesting the authority to set the deadlines exclusively in the judge—instead of the court by local rule.

Rule 16 (Discovery and Inspection) would be amended to require a defendant to disclose reports of examinations and tests that the defendant intends "to use"—instead of items

that the defendant intends "to introduce"—at trial. The proposed change is consistent with the standard used elsewhere in the rule regarding the disclosure of other types of information.

Rule 17 (Subpoena) would be amended to conform with the recent amendment of 28 U.S.C. § 636(e), which authorizes a magistrate judge to hold in contempt a witness who disobeys a subpoena issued by that magistrate judge. The proposed amendment was not included in the amendments published for comment because the Federal Courts Improvement Act took effect after publication. The amendment conforms with the new statute and need not be published for comment in accordance with established Judicial Conference procedures.

Rule 24 (Trial Jurors) contains ambiguous language that may be construed to authorize a defendant, who is represented by counsel, to conduct voir dire of a prospective witness. The proposed amendment eliminates this ambiguity by explicitly authorizing a defendant to conduct voir dire only if the defendant is acting pro se.

The provision in **Rule 26 (Taking Testimony)**, which limits taking testimony to only "oral" testimony, would be deleted to accommodate a witness who is not able to give oral testimony, e.g., a witness needing a sign-language interpreter.

Rule 31 (Jury Verdict) would be amended to clarify that a jury may return partial verdicts, either as to multiple defendants or multiple counts, or both.

Rule 32 (Sentencing and Judgment) would be amended to include victims of child pornography under 18 U.S.C. §§ 2251-2257 under the rule's definition of "crimes of violence or sexual abuse." A new provision would also be added to require that a court provide notice to the parties of possible departure from sentencing guidelines on a ground not identified in the presentence report. Finally, the advisory committee withdrew a proposed provision, which had been published for comment, that would have required a judge to make findings on any

unresolved objection to a material matter in a presentence report, whether or not it would affect the sentencing decision. The existing requirements are retained, although the Committee Note encourages judges to be sensitive to unresolved controverted matters in the presentence report that may have no effect on the sentence but that may affect the defendant's place of commitment or medical, psychological, or drug treatment.

Rule 32.1 (Revoking or Modifying Probation or Supervised Release) would be amended to provide a procedural framework governing prosecution of a defendant charged with violating probation or supervised release. The proposed amendments would require that the defendant be afforded an initial appearance proceeding, but the proceeding could be combined with a preliminary revocation hearing, a relatively common practice.

The provisions in **Rule 40 (Arrest for Failing to Appear in Another District)** dealing with the initial appearance of a defendant arrested in one district for an offense allegedly committed in another district would be transferred to Rule 5, Rule 5.1, and Rule 32.1. The proposed amendments clarify and simplify the procedures in existing Rule 40, which have caused confusion.

Rule 42 (Criminal Contempt) would be amended to provide explicit procedures governing the appointment of an attorney to prosecute a contempt. It is also amended to recognize the authority of a magistrate judge to summarily punish a person who commits criminal contempt, consistent with recent statutory changes.

Rule 46 (Release from Custody) would be amended to delete the requirement that the government file bi-weekly reports with the court concerning the status of any defendant in pretrial detention as unnecessary in light of the Speedy Trial Act.

Rule 49 (Serving and Filing Papers) would be amended to permit a court to issue a notice of an order on any post-arraignment motion by electronic means.

Rule 52 (Harmless and Plain Error) would eliminate the ambiguity in the existing rule that refers in the disjunctive to "plain error or defect." As noted in *United States v. Young*, 470 U.S. 1, 15 n.12 (1985), the disjunctive is misleading. The words "or defect" would be deleted under the proposed amendments.

The definitions contained in **Rule 54 (Application and Exception)** would be transferred to Rule 1 under the proposed amendments.

Rule 59 (Effective Date) would be abrogated as no longer necessary.

The Committee concurred with the advisory committee's recommendations. The proposed "style" revision of the Federal Rules of Criminal Procedure is in Appendix D together with an excerpt from the advisory committee report.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rules 1 through 60 and transmit these changes to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Proposed "Substantive" Amendments

For several years the advisory committee has been working on separate "substantive" amendments to Rules 5, 5.1, 10, 12.2, 26, 30, 35, and 43 and new Rule 12.4. The proposed amendments were published separately from the restylized rules to ensure that each set was separately considered.

Video-Teleconferencing Proposal

The proposed amendments to **Rule 5 (Initial Appearance)**, **Rule 10 (Arraignment)**, and **Rule 43 (Defendant's Presence)** would explicitly provide a judge with the discretion to conduct initial appearance and arraignment proceedings by video teleconferencing (in lieu of the

defendant's physical presence) upon the defendant's consent. For nearly a decade, the advisory committee has been urged by judges, particularly judges in large geographic districts, to amend the rules and specifically authorize video teleconferencing of these preliminary proceedings. The proposed amendments generated substantial favorable and negative comment from the bench and bar.

The proposals published for comment in August 2000 included an alternative version that would have authorized a court to conduct these pretrial proceedings by video teleconferencing without the defendant's consent. Although this proposal drew considerable support, especially from the Department of Justice, the advisory committee determined to proceed only with the more limited version that requires the defendant's consent. The advisory committee believed that requiring the defendant's consent and the approval of the judge as preconditions to the use of the video-teleconference procedure substantially satisfied the concerns raised against the proposed amendments.

Some federal district courts take the position that the defendant can now waive the right to be present at a preliminary proceeding, despite the existing provisions of Rule 5, Rule 10, or Rule 43. Other courts question whether the defendant can waive this right. The committee believed that making it clear in the rules that this procedure is authorized will facilitate its use in appropriate cases by eliminating any reluctance engendered by the potential of a legal challenge.

- Background of Video-Teleconferencing Proposal

The Ninth Circuit Court of Appeals in *Valenzuela-Gonzales v. United States*, 915 F.2d 1276 (9th Cir. 1990), held that Rule 10 does not allow video teleconferencing of an arraignment over the defendant's objections. Since then, the advisory committee received requests to consider amending the rules to permit video teleconferencing of initial appearances and

arraignments. Proposed amendments authorizing the procedure in an arraignment with the defendant's consent were published for comment in 1993. At the request of the Committee on Defender Services, however, the advisory committee withdrew the proposal pending completion of a pilot video-teleconferencing project funded by the United States Marshals Service. This pilot project eventually collapsed when the public defender in one of the two courts chosen to participate in the project declined to consent to such a procedure.

Since 1993, several developments have prompted the advisory committee to move forward with the proposed video-teleconferencing amendments. First, the advisory committee continued to receive a steady stream of requests from judges to amend the rules to authorize video teleconferencing. Second, the Judicial Conference has adopted a general policy of promoting video teleconferencing and reiterated its endorsement of this general policy on several occasions. Third, legislation authorizing the procedure has been introduced in Congress. Finally, the quality of video transmission continues to steadily improve. Today's equipment is markedly superior to equipment used only a few years ago.

- Repeated Requests from Judges to Amend the Rules to Authorize Video Teleconferencing

The ever-growing criminal caseload continues to place immense pressures on judges, particularly on judges stationed in "border states" where the volume of criminal cases has exploded. Some of these judges routinely walk into courtrooms packed with 50 to 100 prisoners waiting for summary pretrial proceedings. Many of these prisoners have been on buses during the previous night traveling to the courthouse. The judges working in these conditions have understandable concerns for the security of everyone in the courtrooms. Video teleconferencing of these proceedings not only alleviates some of the security problems, but it also offers a

technology that may enhance a judge's flexibility in scheduling proceedings and reduce down-time spent in physically presenting the defendant before the judge.

- Judicial Conference Actions Promoting Use of Video-Teleconferencing Technologies

The *1997 Long Range Plan for Automation in the Federal Judiciary*, approved by the Judicial Conference in 1997 (JCUS-MAR 97, p. 10), encourages courts to "use video telecommunications technologies to facilitate more efficient training, conferencing, administration, and judicial proceedings." The report observes that "when used for courtroom proceedings, video telecommunications technologies may possibly speed the resolution of cases, reduce the cost of litigation, and, for pretrial hearings, reduce security costs and risks by allowing prisoners to participate directly from prison." The June 2000 report of the Committee on Court Administration and Case Management to the Judicial Conference is in accord, noting that "various pretrial, civil and criminal proceedings, sentencings, settlement conferences, witness appearances in trials, arraignments, bankruptcy hearings, and appellate oral arguments are among the types of judicial proceedings in which this technology has proven beneficial where compelling geographic and logistical conditions exist." Further support for the use of video-conferencing technologies is found in the Director's February 2000 report on Optimal Utilization of Judicial Resources sent to Congress on behalf of the judiciary, which concludes that the procedure is cost effective: "In June 1998, an assessment was completed of the applicability of video evidence presentation, videoconferencing, and other technologies. The study confirmed earlier views that technology in the courtroom can facilitate case management and decision making, reduce trial time and litigation costs, and improve the quality of evidence presentation, fact-finding, jury attentiveness, and understanding, and access to court proceedings."

Today, well over 100 federal court sites are equipped with video-teleconferencing capability. Additional sites continue to be fitted with the new technology. The equipment is used in a wide variety of proceedings, including prisoner proceedings, settlement conferences, and bankruptcy hearings.

- Congressional Interest in Greater Use of Video-Teleconferencing Technologies

On April 26, 2001, Senator Strom Thurmond (R-SC) introduced S. 791 (107th Congress), which would directly amend the Criminal Rules to authorize a court to conduct video teleconferencing of initial appearance and arraignment proceedings without the defendant's consent, and of sentencing proceedings under certain restrictive circumstances. Senator Thurmond remarked that the bill would "promote a safer and more efficient federal court system." He went on to say that video teleconferencing "allows proceedings to operate more efficiently and at lower costs, while maintaining many of the benefits of communicating in person." The bill reflects a recurring congressional theme urging the federal judiciary to fully use technology.

- Quality of Video Transmission

The quality of the transmission from early video-teleconferencing equipment proved unsatisfactory, often with grainy pictures and awkward delays between aural and facial movements. State-of-the-art technology has eliminated much of the deficiencies. Picture quality can be excellent with only the briefest delay detected between sound and movement.

- Justification of Proposal

The advisory committee carefully reviewed the advantages and drawbacks of the video-teleconferencing proposal. It concluded that the proposed amendments should be adopted

because they promote security, efficiency, and convenience for the court, defendant, and counsel.

The specific reasons include the following:

(1) These summary proceedings by video teleconference can only take place with the defendant's consent, which the committee believes avoids most, if not all, the problems opponents raise.

(2) Conducting pretrial proceedings by video teleconferencing reduces security risks in the courtroom, where adequate law enforcement officers are sometimes unavailable to police large groups of transported defendants. It also eliminates security risks not only to the law enforcement officers but also to the defendants during transit to the courthouse.

(3) Judges continue to request that the rules be amended to provide them with discretion to conduct proceedings by video teleconference in appropriate cases. Particularly in high-volume criminal-case jurisdictions, video teleconferencing would provide a court with added flexibility to control its calendar, provide a more efficient process, and save judges' time.

(4) The ability to conduct an initial appearance by video teleconference may eliminate delays of up to 48 hours and expedite a defendant's release in some large geographic districts (e.g., Eastern District of Washington, Vermont) where the single judge would otherwise have to travel hundreds of miles to conduct the proceeding.

(5) Holding facilities in some jurisdictions are far from the courthouse, imposing significant travel inconvenience on defendants who may be transported early in the morning with a large group of other defendants, compelled to stay at the courthouse until all proceedings are completed, and returned to the holding facility at the end of the day. Video teleconferencing eliminates the need for these travel days with all their attendant problems.

(6) Video teleconferencing is already being conducted with the defendant's consent in many state and some federal court jurisdictions. In many cases, the proceeding is viewed by the defendant as purely administrative with no adjudication and little need for a personal appearance. Judges who have conducted these summary proceedings by video teleconferences recommend them and tell the committee that they have been well received by counsel.

(7) Finally, counsel is not appointed in some jurisdictions until after an initial appearance proceeding. In these cases counsel need not travel to the holding facility where the defendant is appearing for an initial appearance by video teleconference.

The advisory committee is sensitive to the concerns that video teleconferencing may represent an erosion of an important element of the judicial process. A defendant may not fully

appreciate the importance of the preliminary proceeding if conducted by video teleconferencing, particularly if the setting is one bearing little resemblance to a courtroom. In addition, although the quality of a court's equipment may be excellent, the equipment at the holding facility may be substandard. The resulting flawed video transmission may reflect poorly on the pretrial proceeding creating a perception that the proceeding is not important. Beyond raising these potential perceptions, the committee was concerned about the voluntariness of a defendant's consent when made outside the judge's presence in the holding facility. On balance, however, the advisory committee concluded that vesting discretion in the judge to either allow or decline to allow video teleconferencing establishes a strong safeguard that obviates many of these concerns. A judge has complete control over the setting, may inquire into the voluntariness of the consent, and may stop video teleconferencing if the transmission quality is unsatisfactory.

The advisory committee also carefully considered continuing concerns expressed by the Committee on Defender Services. The advisory committee recognized that there might be some cost shifting from the Marshals Service's appropriation to the judiciary's Defender Services appropriation if defense counsel travels to the holding facility to stand with the defendant at the video teleconferencing. The advisory committee concluded that the cost shifting, if any, was justified for several reasons. First, counsel is not appointed prior to nor is present at many initial appearance proceedings, so that the federal public defenders' budget is not affected in these cases. Second, it is unknown how often defense counsel would travel to the holding facility, rather than appear at the courthouse, for the video teleconferencing. Based on the favorable reaction of judges and counsel who have used video teleconferencing for these summary proceedings, the committee believes that as the bar becomes more accustomed to video teleconferencing counsel will become more confident in the integrity of the procedure, and they

will increasingly attend the proceedings at the courthouse, if more convenient. In some instances, counsel's office is located closer to the holding facility than the courthouse, and counsel prefers traveling to the holding facility rather than to the courthouse. Finally, although the individual Marshals' and judiciary's budget accounts may be affected differently, the overall cost to the government as a whole will likely be reduced by using video teleconferencing rather than incurring the significant costs in transporting defendants.

In its study of various state-courts' experiences with video teleconferencing of pretrial proceedings, the advisory committee found that state public defenders use the court's video teleconferencing equipment to interview clients in prison. In a state-sponsored comprehensive study of California video conferencing in arraignment proceedings, public defenders praised the system for saving significant travel expenses and time spent on travel to meet and confer with their clients. As video teleconferencing becomes more widespread, any additional cost incurred by public defenders to travel to a prison to attend a pretrial proceeding transmitted by video may be offset by savings later derived from attorney-client interviews conducted using the same equipment.

The Committee on Defender Services' other concerns—lost opportunities that might facilitate early plea negotiations, potential defendant misperceptions about the neutrality of the judicial proceeding, and fears about dehumanizing the process—were issues constantly in the forefront of the advisory committee's deliberations. The Committee Note contains an extended discussion that is intended to alert courts to these concerns and suggests steps to allay them. In the end, the advisory committee believed that ultimately all these concerns must be weighed by the defendant and counsel, and if the benefits of video teleconferencing are found wanting, no consent should be given.

In summary, most judges probably will not elect to conduct initial appearances and arraignments by video teleconference because the holding facilities, counsel, and prosecutor are all located near the courthouse. But some districts must operate under the inconvenience of having the prisoner (and sometimes counsel) located some distance from the courthouse and the judge. These amendments recognize that courts operate under widely differing circumstances and are designed to give courts the flexibility to conduct these summary proceedings by video teleconference where that procedure is needed—so long as the defendant consents. The advisory committee believes that the unqualified right of a defendant to insist that the initial appearance or arraignment proceeding be held in open court substantially satisfies the concerns raised against the proposed amendments. The committee also believes that many of the objections will dissolve after the court and counsel have gained experience in using video teleconference for these summary proceedings. The committee heard from judges in 10 judicial districts who have conducted these summary proceedings by video teleconference with the parties' consent. These judges gave positive reports about their experiences with this procedure and urged us to adopt the amendments to remove any doubt about the legality of their actions. The comments of these judges who had actually worked with this procedure strongly reinforced the advisory committee's conclusion that these amendments should be adopted to give courts the flexibility to use this procedure.

Remaining "Substantive" Amendments

Rule 5.1 (Preliminary Hearing) would be amended to authorize a magistrate judge to continue a preliminary examination over the defendant's objection. The proposed amendment is inconsistent with a parallel statutory provision authorizing only a district judge to continue the hearing if a defendant objects to a magistrate judge doing so. An earlier proposal to seek

amendment of the legislation before amending the rule was rejected by the Judicial Conference at its March 1998 meeting. (JCUS-MAR 98, p. 24) The Conference instructed this Committee to move forward with the rule change, which is now under consideration. If approved, it is anticipated that notice will be sent to appropriate congressional offices alerting them of the inconsistency between rule and statute so that conforming legislation may be enacted.

Rule 12.2 (Notice of an Insanity Defense; Mental Examination) would be amended to: (1) clarify that a court may order submission to a mental examination by a defendant who has indicated an intention to raise a defense of mental condition bearing on the issue of guilt; (2) require a defendant to give notice of an intent to present expert evidence of the defendant's mental condition during a capital-sentencing proceeding; (3) authorize a court to order a mental examination of a defendant who has given notice of an intent to present evidence of mental condition during a capital-sentencing proceeding; (4) set out the time provisions for disclosing results and reports of the defendant's expert examination; and (5) exclude any expert evidence from the defendant on mental condition during the punishment phase of a capital case for failing to comply with the rule's notice and examination requirements.

New Rule 12.4 (Disclosure Statement) would require a nongovernmental corporate party to disclose any parent corporation. It closely tracks the financial disclosure provisions proposed in similar amendments to the Appellate and Civil Rules. But the proposed amendment would also require the government to disclose, to the extent it can be obtained through due diligence, the identity of any organizational victim. The disclosure of a victim's financial statement could affect a judge's recusal decision if restitution is ordered.

Rule 26 (Taking Testimony) would be amended to allow the court to use remote "two-way" transmission of live testimony under "exceptional circumstances" when a witness is

otherwise unavailable within the meaning of Evidence Rule 804(a)(4)-(5). The proposed amendment tracks an analogous amendment to Civil Rule 43, but is more restricted consistent with Confrontation-Clause considerations.

Rule 30 (Jury Instructions) would be amended to permit a court to request a party to submit its requested jury instructions before trial, consistent with the prevailing practice in many districts. The Committee Note makes clear that the amendment does not preclude the practice of permitting the parties to supplement their requested instructions during the trial.

The proposed amendment of **Rule 35 (Correcting or Reducing a Sentence)** clarifies circumstances when a sentence can be reduced to account for the defendant's substantial assistance in providing information helpful to the government in prosecuting another person when the information was known but not fully appreciated nor acted on within the prescribed time.

The Committee concurred with the advisory committee's recommendations. The proposed amendments to the Federal Rules of Criminal Procedure are in Appendix E together with an excerpt from the advisory committee report.

> **Recommendation:** That the Judicial Conference approve the separately proposed "substantive" amendments to Criminal Rules 5, 5.1, 10, 12.2, 26, 30, 35, and 43 and new Rule 12.4 and transmit these changes to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Combining "Style" and "Substantive" Amendments in a Single Transmission

The comprehensive "style" revision and the proposed "substantive" amendments of the Criminal Rules were published separately to ensure that each set of proposals received individualized attention. The bifurcated review process has worked well. Many comments were received on the "substantive" amendments, resulting in significant changes to several rules and

the withdrawal of several others. Maintaining two separate rules packages has served its purposes, and the Committee now recommends that the Judicial Conference combine the two sets of rules proposals into a single package for the Supreme Court's consideration.

> **Recommendation:** That the Judicial Conference substitute the separately proposed "substantive" Criminal Rules amendments for the corresponding amendments contained in the comprehensive "style" revision of the Criminal Rules, and transmit these changes along with the remaining amendments in the "style" revision as a single set of proposals to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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